made if "the court considers it reasonable that such an order or judgment be made or given". In paragraph 19 of his judgment (Page 43 of the Record) the learned trial judge says, " . . . having regard to the penultimate paragraph of the tenancy agreement wherein the tenant covenanted that 'if I commit any breach of the conditions above mentioned I shall be deemed to have offered to surrender the premises and the landlords may forthwith enter upon the premises', I do not see any valid defence to the claim in view of my finding that the Respondent has in fact committed a breach". It seems to me therefore that the learned trial judge gave judgment for recovery of possession under section 15(1)(b) of the Act. However, there was no declaration or finding as to the court considering it to be reasonable that such order or judgment be made or given as required by section 15(1)(b). No evidence other than this sub-letting had been led before the learned trial judge which was directed to the question of reasonableness. There was, therefore, nothing before him to which he could have directed his mind before giving his decision. See *K.S. Awari* v. *Lee Ling Neo*[4], *Cherian Varughese* v. *Aminah Radin Osman*[5]. This being so, on this count alone the judgment of the lower court cannot be supported and must be set aside.

When the appeal was further argued on the second day an examination of the Order of the Rent Conciliation Board together with the Agreement made it quite apparent that the Plaintiffs (Respondents) have been unlawfully collecting from February 1, 1974 for the last eight years rent in respect of the Premises in excess of the rent fixed by an Order of the Board. This being so the Plaintiffs (Respondents) have contravened the provisions of section 3 of the Act and are liable to penalties under section 5 thereof. Plaintiffs are now seeking the assistance of the court in the recovery of possession of the Premises. I do not see how the court can assist them in these circumstances. For this reason too the Respondents' (Plaintiffs) claim for possession in the first instance could not have been acceded to.

For these reasons I allowed the appeal and ordered costs against the Respondents here and below.

Appeal Allowed.

Solicitors: *J.B. Jeyaretnam & Co.; Kirpal Singh & Co.*

ZAHRIN BIN RABU v. YING TAI PLASTIC & METAL MANUFACTURING (S) PTE. LTD.

[O.C.J. (Rajah J.) May 27, 1982]
[Singapore – Suit No. 3857 of 1981]

Workmen's Compensation – Injury in the course of employment – Alleged application for compensation under Workmen's Compensation Act – Whether defendant precluded from claiming under common law – Workmen's Compensation Act, 1975, s. 33(1) & (2).

Workmen's Compensation – Application for compensation under Workmen's Compensation Act can be withdrawn.

The plaintiff lost four fingers of his right hand as a result of an accident in the course of his employment. Subsequently, he received a letter from the Commissioner of Labour which enclosed a document similar to Exhibit P2 and the document Exhibit P3, which was then unfilled except for the figures 7353/81 inserted against "NWCR" and 25/5/81 inserted against "Accident On". The plaintiff went to the Commissioner's office on July 7, 1981. He claimed that he did not know what the contents of Exhibits P2 and P3 were. The plaintiff was illiterate both in Malay and English.

Held: (1) in the absence of the Workmen's Compensation Act expressly declaring that an application to the Commissioner for compensation under the provisions of the said Act *ipso facto* abrogates a workman's common law rights for damages, a workman's unilateral voluntary application for compensation under the Act can in the same way voluntarily and unilaterally be withdrawn by the workman thus enabling him to proceed and so maintain his action for damages in any court;

(2) in the present case no Order for compensation had been made by the Commissioner. The plaintiff may therefore proceed with the action under common law.

Case referred to:

(1) *Leach* v. *R.* [1912] A.C. 305

CIVIL SUIT.

S. B. Shah (*P. T. Seah* with him) for the plaintiff.
Karuppan Chettiar for the defendants.

Cur. Adv. Vult.

Rajah J.: On October 24, 1964, the Defendants, who carry on the business of manufacturing plastic products for the electronic industry, employed the Plaintiff, Zahrin bin Rabu, born on October 24, 1964, sometime in January 1981 as a machine operator. He is illiterate both in Malay and English. On May 23, 1981 the Plaintiff, in the course of and arising out of his employment met with an accident as a result of which he lost four fingers of his right hand. He reported the accident to his office, and was admitted to the Singapore General Hospital where he was treated for his injuries. Some time after he left the hospital and while at home he received a letter from the Commissioner of Labour which had enclosed in it a document similar to Exhibit P2 and the document Exhibit P3, which was then unfilled except for the figures 7353/81 inserted against "NWCR" and 25/5/81 inserted against "Accident On". He went to the Commissioner's office some four or five days after receipt of the letter, but before he did so he returned to work with the Defendants. He did not speak to any one at his employers' office about the letter. He says that when he went to the Commissioner's office on July 7, 1981 he did not know what the contents of Exhibit P2 and Exhibit P3 were. He further says that at the office of the Commissioner no one interpreted or explained P2 or P3 to him and that he affixed his right thumb print to Exhibit P3 in the belief that he was acknowledging the receipt of the Commissioner's letter to him. Although he was closely cross-examined by counsel on this he was not shaken and there is no other evidence before me to the contrary. It is not in dispute that both the blue ink and rubber stamp insertions were carried out at the Commissioner's office by one or more of its officers. No evidence was called to contradict the Plaintiff although he had indicated to the Defendants in his Amended Reply re-filed on May 6, 1982, the nature of his evidence. Exhibit P3, as it now stands, reads:

'NWCR 7353/81
Commissioner for Labour
Accident on 25/5/81 July 8, 1981

I, Zahrin bin Rabu (I/C No.: 1717481 I Date of Birth: 24/10/64) residing at 3 Lorong Lihat, Singapore 2470 wish to claim com-

pensation for injuries sustained in the abovementioned accident under Workmen's Compensation Act.

2. I wish to claim against the employer/employer's insurer.

July 7, 1981
(RTP of Zahrin bin Rabu)"

The figures "25/5/81" against the words "Accident on" were written in error. They should read "23/5/81".

The Writ herein was issued on October 14, 1981. In paragraph 5 of his Amended Defence the Defendant pleads as follows:

"5. On or about the 7th day of July 1981, the Plaintiff applied to the Commissioner for Labour for compensation under the provisions of the Workmen's Compensation Act. By reason of section 33(1) of the Workmen's Compensation Act, 1975, the Plaintiff is precluded from bringing any action for damages in a court against the Defendants in respect of the injuries sustained by him."

The said paragraph is now before me for adjudication as a preliminary question of law.

On the evidence led before me and the arguments raised by both counsel I have to decide two issues, (1) whether the Plaintiff by having appended his thumb print to Exhibit P3 "has applied to the Commissioner for compensation under the provisions of this Act", (2) if the answer to (1) is in the affirmative whether the Plaintiff is precluded from bringing any action for damages in this Honourable Court.

Issue (1) – It is not in dispute that the Plaintiff is unable to read, write or speak the English language. It is equally not in dispute that the Plaintiff is unable to read or write the Malay language, hence his having to affix to Exhibit P3 his right thumb print. It is not in dispute that it was one or more officers from the office of the Commissioner of Labour who wrote in all the words in ink and effected the rubber stamp insertions on Exhibit P3.

I am satisfied that the Plaintiff is completely illiterate and that unless someone had interpreted and explained the contents of Exhibits P2 and P3 to him in Malay he would not have known what the contents of Exhibit P2 were. I am also satisfied that when the Plaintiff arrived at the office of the Commissioner for Labour he was not aware of the contents of Exhibits P2 and P3. Bearing in mind that (1) both Exhibits P2 and P3 originated at the office of the Commissioner for Labour, (2) the Plaintiff had no obligation to inform the Commissioner of Labour of the accident nor to make a claim therefor and (3) the Plaintiff was a complete illiterate I think the labour official who attended to him should have seen to it that both the documents were interpreted to the Plaintiff through a proper interpreter, more so as the evidence before me is that there were such interpreters available at the office for that purpose. I found the Plaintiff to be a truthful witness. I accept his evidence in regard to Exhibits P2 and P3 and find that he appended his right thumb print to Exhibit P3 in the belief that what he was doing was to acknowledge the receipt of a letter from the Commissioner for Labour. This being my finding it necessarily follows that in my view the Plaintiff has not applied to the Commissioner for compensation under the provisions of the Act.

This should, of course, be sufficient to dispose of the matter now before me. But I am urged by counsel to pronounce on Issue (2), as this is a matter which affects the common law rights of an injured workman seeking legal redress in our courts. I now proceed to do so, if not for so being urged, then for the reason that this matter could go further for interpretation and determination.

Issue (2) – Mr. Karuppan in his argument urges upon me the view that the mere application under section 33(1)(a) of the Workmen's Compensation Act, 1975 (the Act) to the Commissioner for Labour by a workman for compensation operates to abrogate an injured workman's cause of action at common law for damages with the resultant loss of his common law right of action for damages against the employer.

The first point I wish to make on this argument is that the Act in its own words is "An Act to consolidate and amend the law relating to the payment of compensation to workmen for injury suffered in the course of their employment". That is to say, the purpose of the Act is twofold, (1) to consolidate the existing law and (2) to amend the law relating to the payment of workmen's compensation. The second point I wish to make is Mr. Karuppan seeks to put an interpretation to clause 33(1)(a) which, if correct, would in effect make alterations to the common law. On the first point *Maxwell* on Interpretation of Statutes (12th Edn.) pages 116-117 has this to say:

"In the case of a consolidating Act there is a particularly strong presumption that it does not alter the law contained in the statutes which it replaces. The reason is that 'it is the invariable practice of Parliament to require from those who have prepared a consolidation Bill an assurance that it will make no substantial change in the law and to have that checked by a committee.'"

On the second point there is a presumption against changes in the common law and on this if I may again quote from *Maxwell* at page 116:

"Few principles of statutory interpretation are applied as frequently as the presumption against alterations in the common law. It is presumed that the legislature does not intend to make any change in the existing law beyond that which is expressly stated in, or follows by necessary implication from, the language of the statute in question. It is thought to be in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness, and to give any such effect to general words merely because this would be their widest, usual, natural or literal meaning would be to place on them a construction other than that which Parliament must be supposed to have intended. If the arguments on a question of interpretation are 'fairly evenly balanced, that interpretation should be chosen which involves the least alteration of the existing law.'"

Section 33 of the Act reads:

"33. (1) Nothing contained in this Act shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted an action for damages in respect of that injury in any court against his employer or if he has recovered damages in respect of that injury in any court from his employer, and no action for damages shall be *maintainable* in any court by a workman against his employer in respect of any injury –

(a) if he has applied to the Commissioner for compensation under the provisions of this Act; or

(b) if he has recovered damages in respect of the injury in any court from any other person.

(2) If an action is brought within the time specified in section 11 in any court to recover damages independently of this Act for injury caused by any accident and it is determined in the action or on appeal that the injury is one for which the employer is not liable but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court shall, if the workman so chooses, proceed to assess such compensation and may deduct therefrom all or any part of the costs which, in its judgment, have been caused by the workman instituting the action instead of proceeding under this Act."

It is to be noted that this section does not specifically say that the common law right of a workman to an action for damages in respect of an injury suffered by him is automatically extinguished if he applies to the Commissioner for compensation under the Act. What it does say is that a workman shall not maintain an action for damages if an application for compensation has been made by him to the Commissioner.

Under the Act the worker, unlike the employer, is not obliged to inform the Commissioner of the accident, nor is he obliged to apply to the Commissioner for compensation in respect of it. The act of applying for compensation is purely a voluntary one on the workman's part.

Compensation under the Act becomes payable to the workman by the employer if injury is occasioned to him in the course of and arising out of his employment. The workman does not have to show negligence on the part of the employer whose liability to the workman for the accident is absolute. Under the common law not only must injury to himself be proved by the workman but also that such injury was caused to him by the negligence of his employer. It was never the intention of the Legislature to deprive a workman of his common law rights against his employer. What the Act does do is to give him rights against his employer which he did not have under the common law.

If a workman suffers an accident through the negligence of his employer there arises by virtue of the common law a cause of action in tort for damages in negligence against the employer. This cause of action immediately vests in the workman and he has a common law right to bring proceedings in the appropriate court. This right continues in the workman until such time as he may be debarred from doing so by the law of limitation.

Under section 33(1)(a) what has perhaps been debarred to the workman is his right to bring a common law action for damages and this debarrment continues so long as there is an application by the workman before the Commissioner of Labour for compensation. But this debarrment in no way affects the cause of action already vested in him. As soon as the application for compensation is withdrawn, and be it noted such withdrawal is not forbidden by the Act, the right to maintain an action revives and the workman may then proceed with his action for damages in the appropriate court. The situation here is, to my mind, analogous to section 4(1) of the Criminal Evidence Act 1898 (61 & 62 Vict c. 36) which runs as follows:

"The wife or husband of a person charged with an offence under any enactment mentioned in the schedule to this Act may be called as a witness either for the prosecution or defence and without the consent of the person charged."

This was held by the House of Lords in *Leach* v. *Rex*[1] to make a wife a competent witness against her husband and not of making her compellable. "The principle" said Lord Atkinson at 311 "that a wife is not to be compelled to give evidence against her husband is deep seated in the common law of this country, and I think if it is to be overturned it must be overturned by a clear, definite, and positive enactment, not by an ambiguous one such as the section relied upon in this case."

This scheme of the Act, in my view, is not to abrogate a workman's common law cause of action but to enable him, if he so desires, to get a speedy remedy for the injury suffered by him. But in so enabling him the Act sees to it that he does not get a double benefit, that is to say, both compensation under the Act and damages under the common law for the one injury (section 18 of the Act). Under section 33(2) of the Act a workman's right to compensation, in my view, lies dormant while he pursues his common law action but should he lose the action he may choose to ask the court to assess compensation under the Act.

In the absence of the Act expressly declaring that an application to the Commissioner for compensation under the provisions of the Act *ipso facto* abrogates a workman's common law rights for damages, I am of the view that a workman's unilateral voluntary application for compensation under the Act can in the same way voluntarily and unilaterally be withdrawn by the workman thus enabling him to proceed and so maintain his action for damages in any court.

In the instant case no Order for compensation has been made by the Commissioner. Had there been such an Order made one might then, perhaps, have reasonably argued that the Order operates to merge all other rights of action in respect of the injury in it, more so in view of the provisions of section 28 of the Act which enacts:

"28. Where an order has been made by the Commissioner under section 25 it shall be enforced by a District Court in the same manner as a judgment of that court and all necessary processes may be served by the court on behalf of the Commissioner:
Provided that no sale of immovable property shall for the purposes of such enforcement be ordered except by the High Court."

The accident took place on May 23, 1981, the alleged application for compensation was made on July 7, 1981, the so-called application was withdrawn by the Plaintiff on January 12, 1982 and the Commissioner notified the Plaintiff's solicitors on January 29, 1982 that "since your client Zahrin bin Rabu wishes to claim damages under the common law in respect of the above accident, please note that this office will take no further action on the matter." (Exhibit D2). In my opinion the action may now proceed and be maintained by the Plaintiff.

Order accordingly.

Solicitors: *P.T. Seah & Co.; Murphy & Dunbar.*

IN THE ESTATE OF PANG SOO HO, DECD.

[O.C.J. (Chua J.) May 27, 1982]
[Singapore – Probate No. 125 of 1981]

Family Law – Chinese Christian man marrying under the Christian Marriage Ordinance, 1940 – Whether disqualified so long as that marriage subsists from entering into a polygamous marriage with another woman – Christian Marriage Ordinance (Cap. 37 of the 1955 Revised Edition) – Women's Charter 1961 – Women's Charter (Cap. 47).

Probate and Administration – Deceased died intestate – Petition for letters of administration by lawful children and widow – Caveat by 2nd and 3rd wives and their issues.

In this case the deceased a Chinese Christian domiciled in Singapore in his lifetime married Madam Tan Loo Teck on June 30, 1942 under the Christian Marriage Ordinance, 1940. Later in 1952 he went through a wedding ceremony according to Chinese customary rites with Madam Lim Pab Hup and still later in 1957 he